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The Soviet Legal System and Its Key Players: Facing the Challenges of Reform

A Research Paper

October 1988



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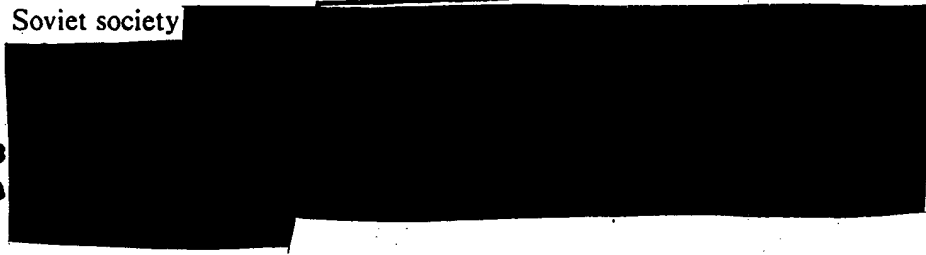
October 1988

The Soviet Legal System and Its Key Players: Facing the Challenges of Reform

Summary

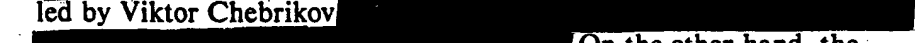
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Faced with an often ineffective and corrupt Soviet judicial system, Communist Party (CPSU) General Secretary Mikhail Gorbachev, as is evident in the resolutions approved at the recent 19th Conference of the CPSU, has declared his determination to establish the "rule of law" in Soviet society



Although the party conference resolution on legal reform lays out broad guidelines for a thorough revitalization of the legal apparatus, the reform effort to date has been administered by institutions and, in many cases, officials who predate Gorbachev's accession. The party, through the CPSU Secretariat, supervises a legal structure in which central, national-level bureaucracies and adjudicating bodies direct branches at the union-republic, regional, and local (district and city) levels. Key institutions of the Soviet legal apparatus include:

- A powerful procuracy at all levels, which is generally independent of all but party supervision and which has broad powers: it supervises investigations and oversees the judicial process
- 

- The KGB and the Ministry of Internal Affairs (MVD), which ensure domestic order and perform investigative functions. The KGB has been led by Viktor Chebrikov
- 

MVD
by

On the other hand, the
has been led
by Aleksandr Vlasov,

- Ministries of Justice at the national and republic levels, which oversee the conduct of the courts and the bar and play a key role in communicating legal policy and information domestically and in representing Soviet legal policy to the world. The Minister of Justice, Boris Kravtsov, is a pre-Gorbachev holdover who nonetheless has lent his strong public support to the goals of legal reform.

- A court system at each level, including a national-level Supreme Court and republic- and regional-level appellate courts, as well as special courts. Although the court system purports to be an independent judiciary, party interference in the courts' work is common, particularly at the lower levels. The court system also is encumbered with pre-Gorbachev judges. In the USSR Supreme Court, for example, the Chairman and 15 other jurists are holdovers. [REDACTED]

Although Gorbachev has replaced some of the leaders of these organizations with his own people, the personnel changes so far have had mixed results, suggesting that the General Secretary is not yet able to place forceful advocates of change in the top posts in the legal structure. For example, Aleksandr Sukharev, who was recently elevated to the post of USSR Procurator General, is a front organization veteran who, despite consistent lipservice to legal reform, is not regarded as its strong supporter. [REDACTED]

To strengthen his hand, Gorbachev could:

- Give greater power to the MVD boss.
- Eventually remove Chebrikov from his oversight of the legal system.
- Replace Justice Minister Kravtsov with a more dynamic figure such as Vladimir Kudryavtsev.
- Change the composition of the Supreme Court and lower courts by installing more reform-minded jurists.

Gorbachev's movement in these areas will provide a gauge of his success at legal restructuring. Limited personnel change, despite the passage of new legislation, would foreshadow a continued uphill battle on legal reform for Gorbachev. [REDACTED]

Contents

	<i>Page</i>
Summary	iii
Scope Note	vii
Introduction	1
Party Oversight	1
The Implementing Bodies	2
The Procuracy	2
The Security Organs	3
The Ministries of Justice	5
The USSR Court System	8
The Legal Departments of the Foreign Trade Sector	11
The Treaty and Legal Department of the Ministry of Foreign Affairs	13
Implementers of Reform—A Mixed Picture	14
Outlook	15
Appendix	
Key Players	17

Pages: vii

Exemptions: (b)(1), (b)(3)

The Soviet Legal System and Its Key Players: Facing the Challenges of Reform

Introduction

As Communist Party (CPSU) General Secretary Mikhail Gorbachev embarks on a program of legal reform, he faces a legal system founded by and serving the party. Many of the officials serving within this structure have grown up under the principles of "socialist legality," which confer legitimacy on the party's political dominance and enshrine the rights of the party and state above those of the individual Soviet citizen. They are thus understandably resistant to many proposed reforms.

At the 19th CPSU Conference, held in late June and early July 1988, Gorbachev oversaw the adoption of resolutions aimed at broad legal reform. He has demanded greater efficiency and accountability from the legal and security apparatus

[REDACTED] Gorbachev has called on key institutions and officials in the legal system to exhibit greater tolerance of unofficial criticism, reduce the severity of many criminal punishments, conduct investigations more fairly, genuinely implement the presumption of innocence for criminal defendants, and improve the treatment of prisoners.

Party Oversight

[REDACTED]



Figure 1. KGB boss Chebrikov delivering speech at Dzerzhinskiy Day celebrations, September 1987 (Feliks Dzerzhinskiy founded the Soviet secret police)

The Implementing Bodies

The Procuracy

Below the party, the Procuracy is the institution with the broadest responsibility in the legal apparatus. Subject to substantial party influence, it generally operates independently of other state organs and is a massive, highly centralized body charged with overseeing nearly every legal, executive, and administrative procedure in the USSR. Its authority over investigations, police conduct, court procedures, and the observance of law in most government agencies and institutions suggests a mandate that combines the functions of all forms of US-style prosecutors and state attorneys in a single bureaucracy. Thus, the Procuracy, which is concerned primarily with matters of criminal law, can be involved in a case from the initial investigation throughout the trial and appeal process, up to and including the USSR Supreme Court. Unlike the court system, the Procuracy is not formally elective in nature. It is headed at the national level by the USSR Procurator General, who serves a seven-year renewable term, and at lower levels by procurators who serve five-year terms. By law, the Procurator General of the USSR appoints and supervises his subordinates at all levels in a strict, vertical line of authority. [REDACTED]

Figure 2
Party and Government Oversight of the
Legal System

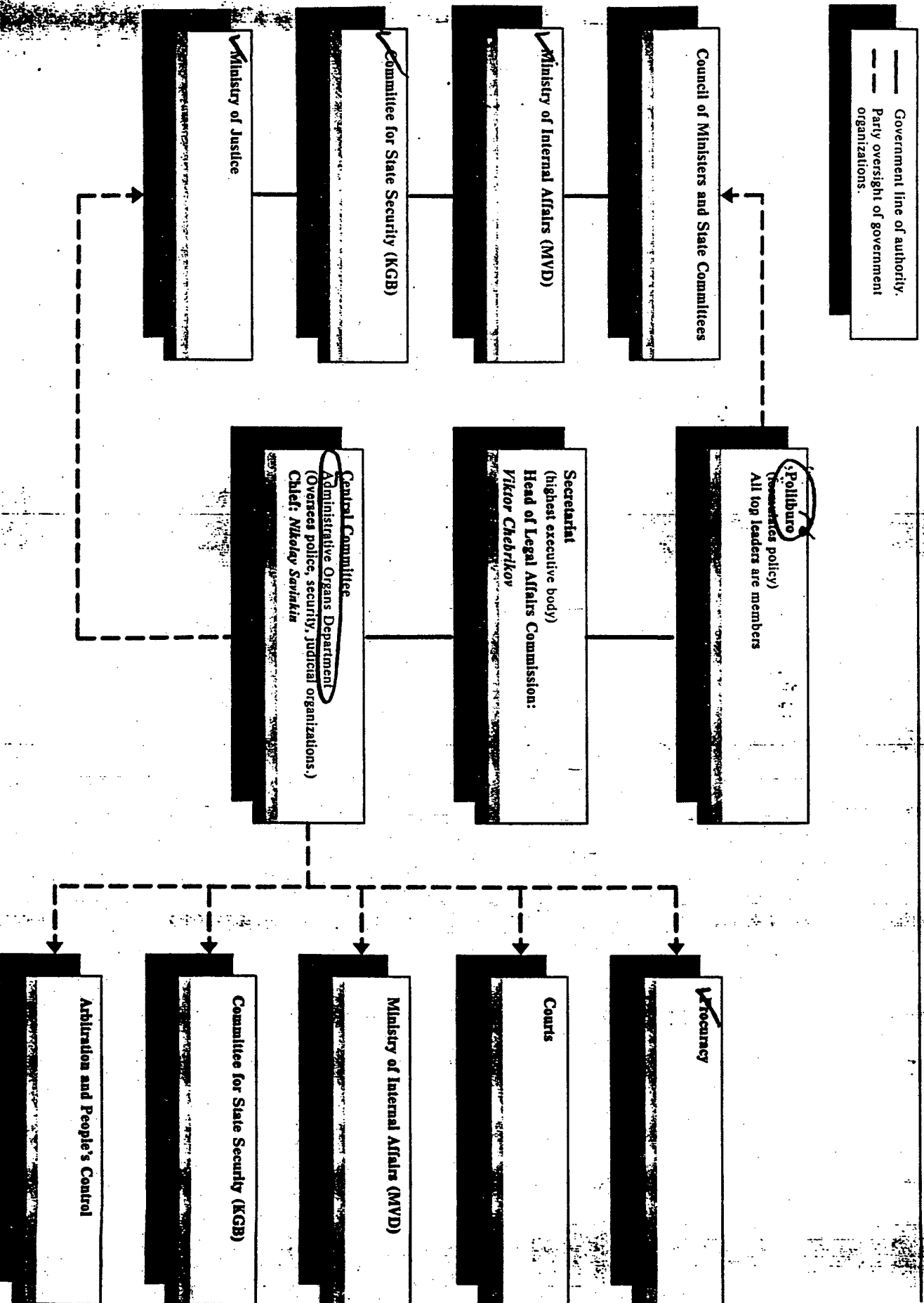
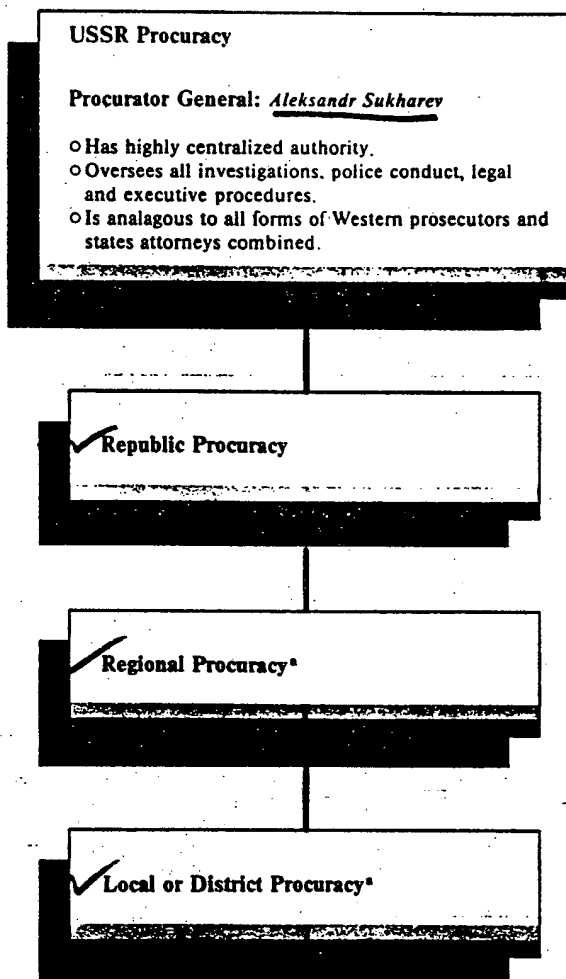


Figure 3
Procuracy

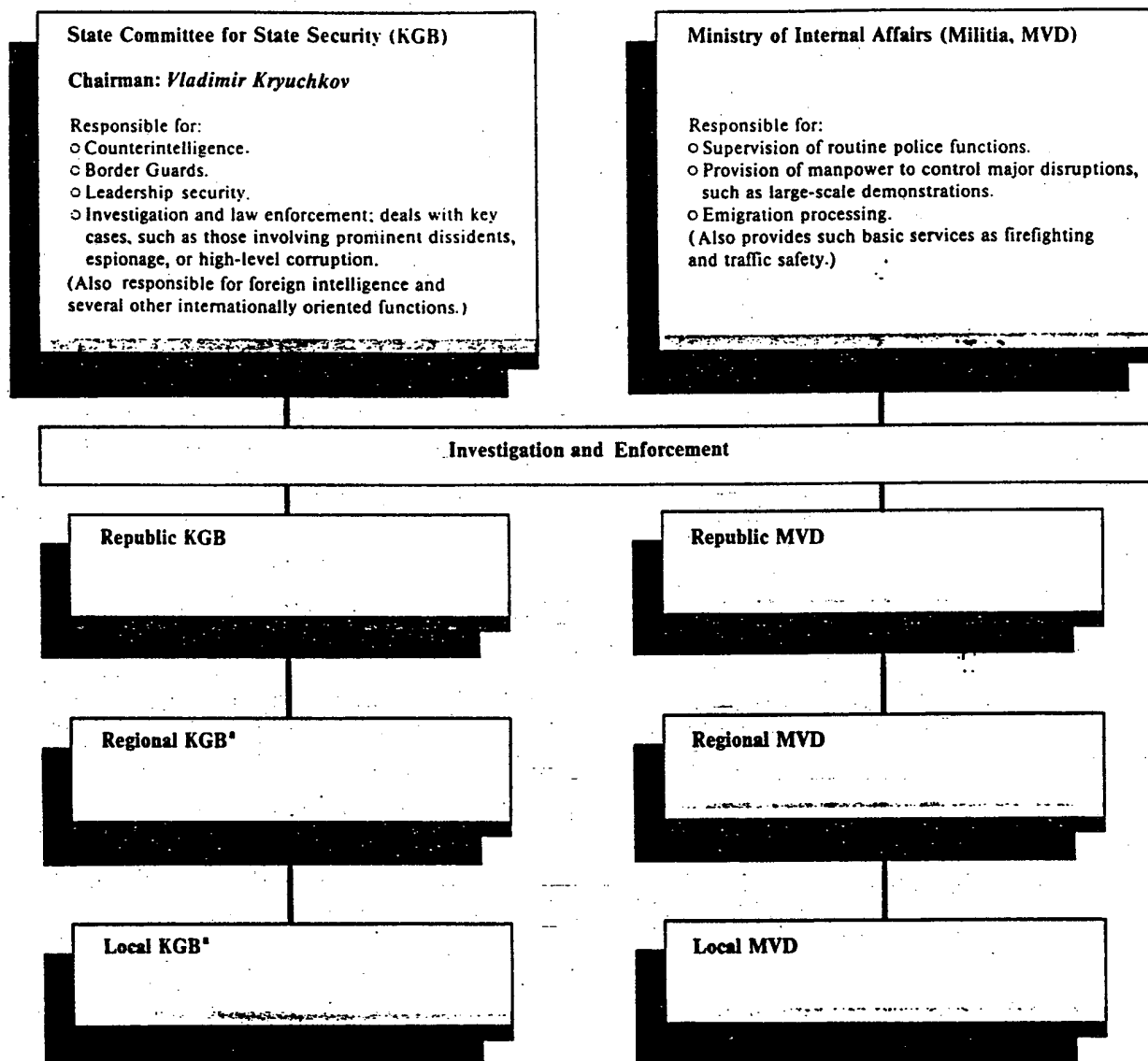


* Procuracy officials in the Ukraine have been publicly criticized for misconduct of investigations and collusion with local party officials.

The Security Organs

The KGB, as the "sword and shield" of the Communist Party, is tasked with investigating the "gravest crimes against the Soviet state."

Figure 4
KGB and MVD



* Some regional and local KGB units in the Ukraine have been criticized for misconduct of investigations and abuse of citizen's rights.

Figure 5. Militiamen and demonstrators



[REDACTED]

The MVD, which fulfills the bulk of the USSR's day-to-day police functions, investigates the vast majority of crimes, ranging from petty theft to murder.

[REDACTED]

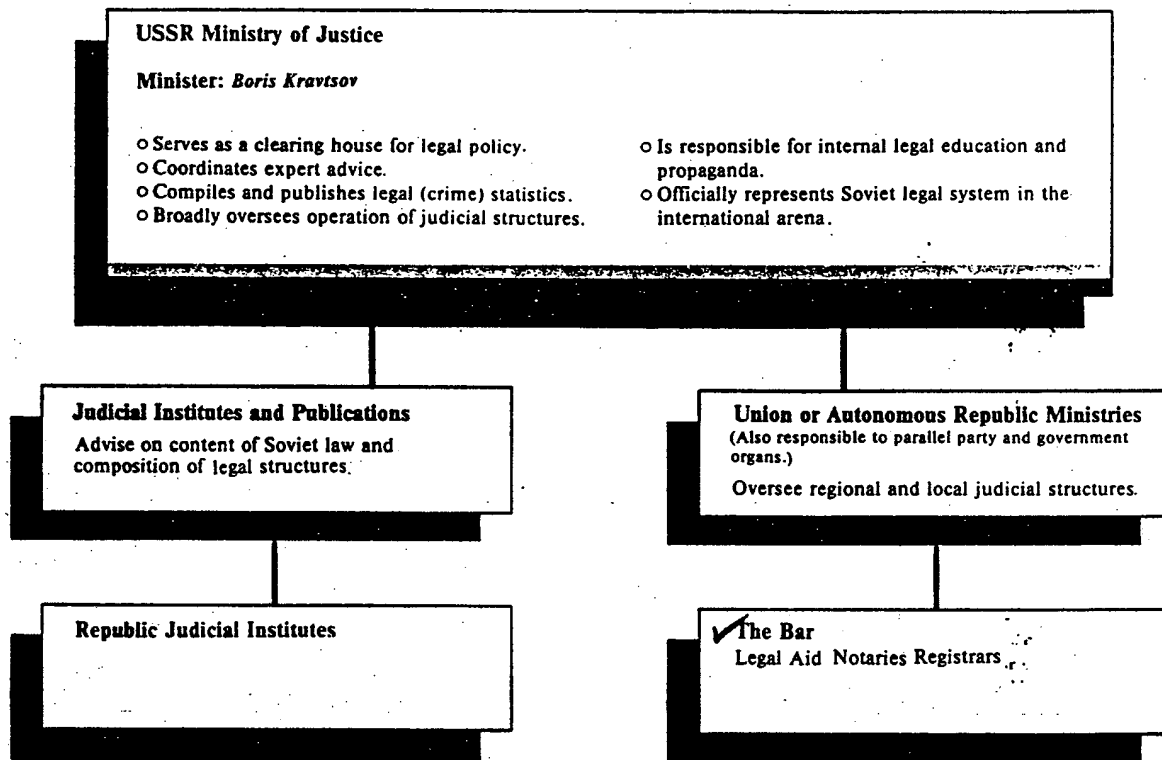
The Ministries of Justice

The Soviet Ministries of Justice at the national and republic levels monitor the work of nearly every judicial body in the USSR, including military tribunals; guide the formulation of new legislation; and serve as a clearinghouse for legal policy and information such as statistics and changes in judicial procedure. The ministries communicate the party's directives throughout the legal community and marshal the resources and support necessary to implement those policies.

In a less direct manner than the Procuracy, which has an explicit watchdog function, the ministries oversee the work of court officials through the issuance of guidelines and the organization of juridical courses and seminars. Their educational role is also aimed at the layman: in the Soviet system, information and propaganda about the law and its agencies are considered major elements of socialization for all citizens.

[REDACTED]

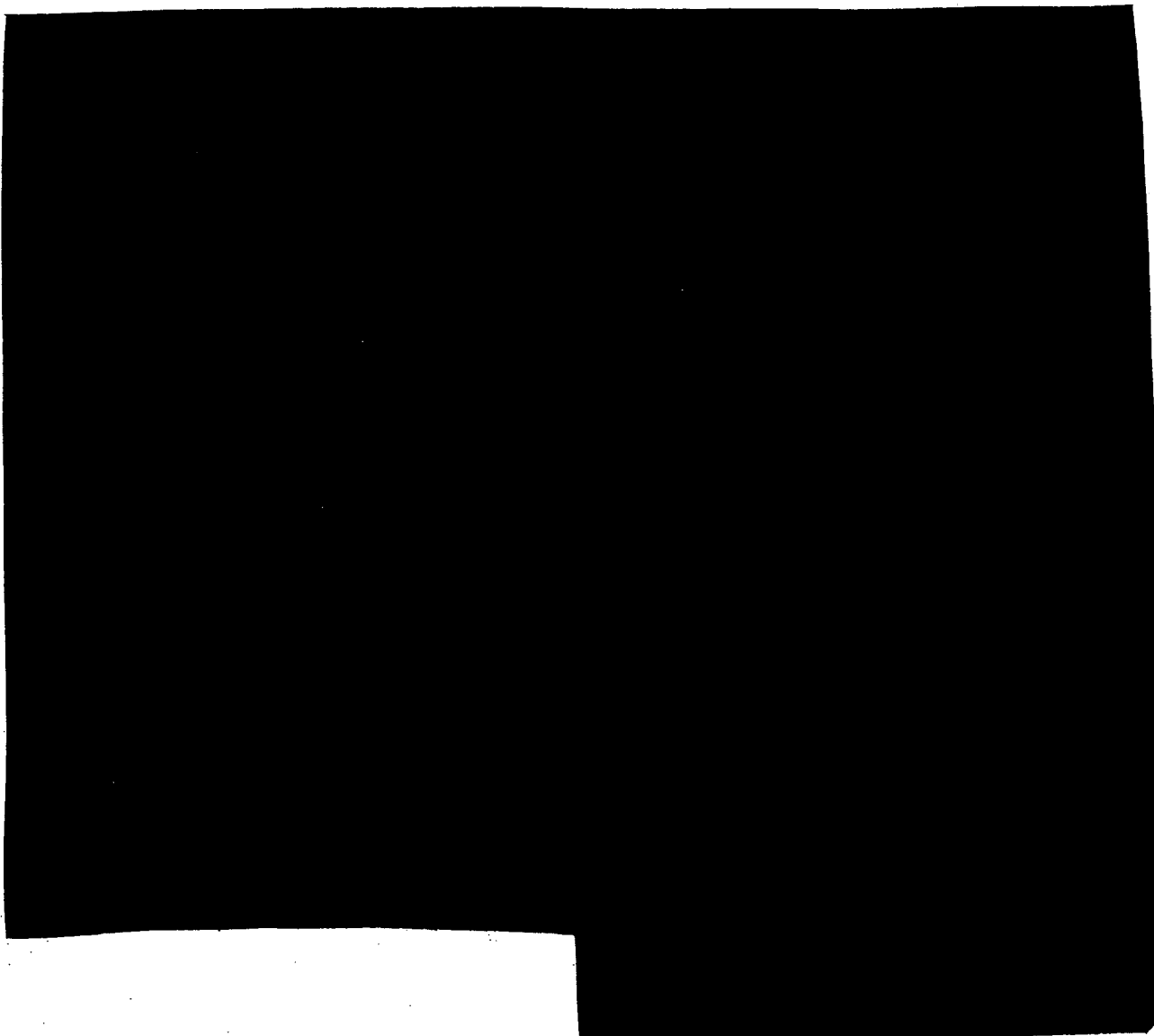
Figure 6
Justice Ministry



Dozens of specialized institutes, such as the All-Union Research Institute of Soviet Legislation and the All-Union Research Institute of Judicial Expertise, which are analogous to a broad spectrum of public and private schools, bureaus, and research organizations in the West, are subordinate to the ministries. These organizations, as well as entities such as the Institute

The ASL: Front Organization for Soviet Jurists

Vladimir Kudryavtsev

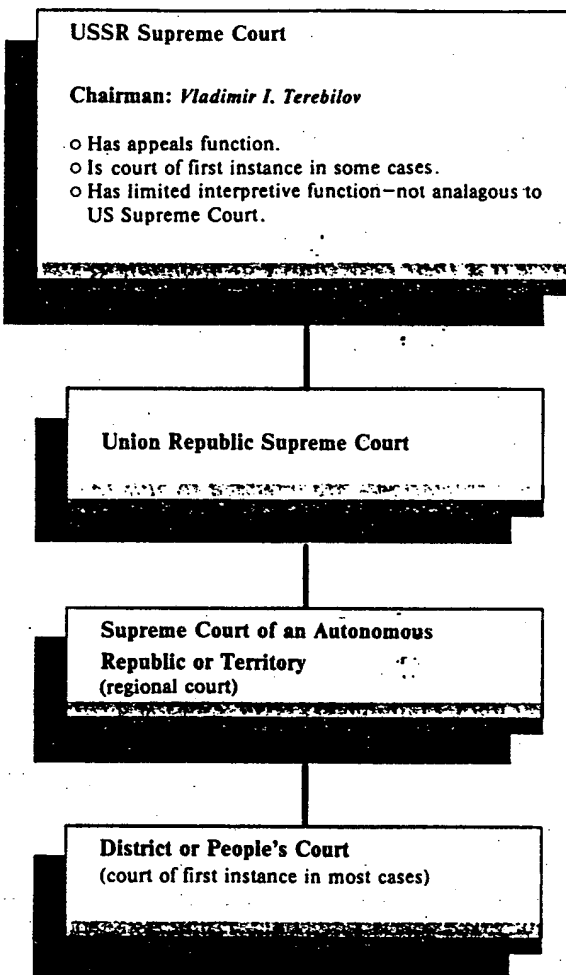


of State and Law, under the Academy of Sciences, and the Moscow State University Law Faculty, publish numerous legal journals, produce and publish a large proportion of the legitimate legal scholarship in the USSR, and help define the issues of legal debate in the intellectual and policy arenas. Since the advent

of Gorbachev's reform program, several top legal scholars have come forward as public spokesmen for the more progressive trends in Soviet law. [REDACTED]

The Ministries of Justice provide general guidance and set fees for lawyers, or "advocates," who advise and represent private citizens in the USSR. The Soviet bar, organized into collegiums at various administrative levels, supervises the work of the legal aid bureaus, which serve the public directly. The number of advocates in the USSR is regulated by the Ministry of Justice.

Figure 7
Court Structure



The USSR Court System

The most important Soviet court is the USSR Supreme Court, which includes a separate military chamber and is both an appellate body and a court of first instance for cases of "exceptional importance" (such as that against Mathias Rust, the young West German who landed his plane on Red Square in May 1987).

The Supreme Court is tasked with providing broad guidance in the form of published reports as well as legal interpretations for the lower courts. It does not, however, make law; its decisions are not treated as legal precedents that are a source of new law. Nor does it interpret the legality or constitutionality of legislation in the manner associated with the US Supreme Court.

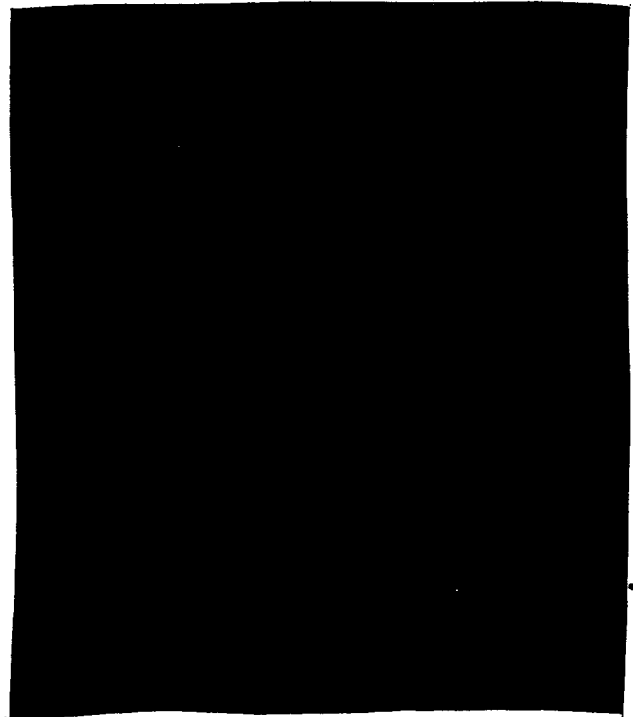


Figure 8. Soviet Supreme Court

the legal resolution of the 19th CPSU Conference failed to include firm guidelines for enhancing the interpretive role of the USSR's highest court.

Below the USSR Supreme Court, there are supreme courts and regional and local (or "people's") courts within each republic. All courts above the local level have an appellate function as well as serving as courts of first instance. The bench at each level consists of

judges, who are government officials, and "people's assessors," lay judges who in practice have scant ability to shape the conclusions of the court. Above the local level, court members are chosen by the corresponding soviets (legislatures). People's court judges and assessors are "elected" by the people—that is, the people vote for a candidate preselected by local party officials.



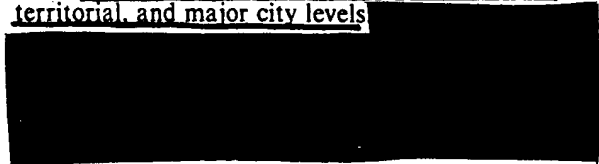
The civil court system is supplemented by other adjudicating bodies, such as the USSR's military tribunals. Below the separate military chamber of the USSR Supreme Court are military tribunals at the garrison, army, flotilla, or similar level, as well as a second tier of courts corresponding to military districts, army groups, and fleet divisions. All serve as courts of first instance, while the upper two levels also have an appellate function. The composition of the tribunals includes both judges and people's assessors, and all judges are appointed by the Presidium of the USSR Supreme Soviet for a five-year term. Although it is not stipulated by law, most military judges are

Figure 9. A People's Court judge



attorneys specializing in military justice. Investigation and prosecution are managed by a military Procuracy structured along the same lines as the civilian apparatus. ■

In the economic realm, state boards of arbitration adjudicate disputes arising between enterprises, which in the Soviet system have legal personality² and must navigate among the many laws governing plan targets, labor and workplace issues, and contractual relations in the planned Soviet economy. The boards, which exist at the national, republic, regional and territorial, and major city levels



² The arbitration system deals with institutions rather than individuals and adjudicates the kinds of contract disputes that might arise between corporations in a free market economy. ■

Figure 10. A People's Court
defendant [REDACTED]

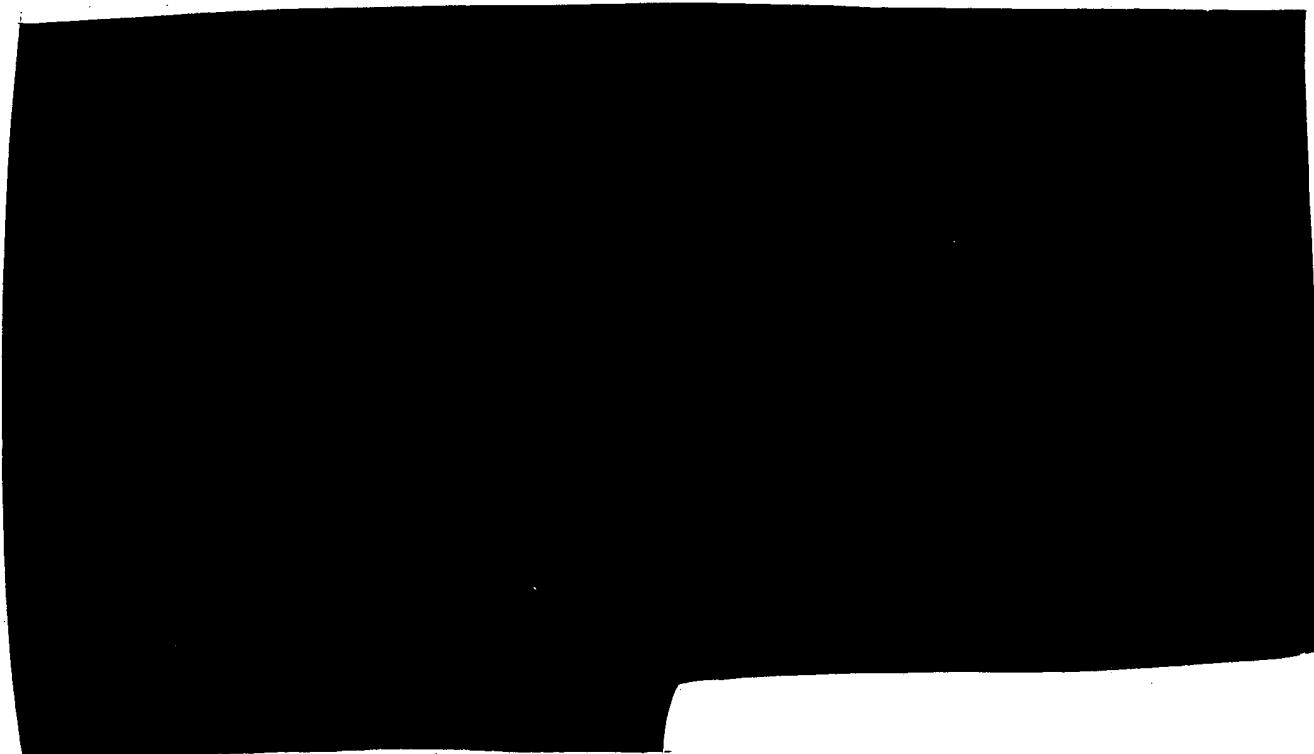
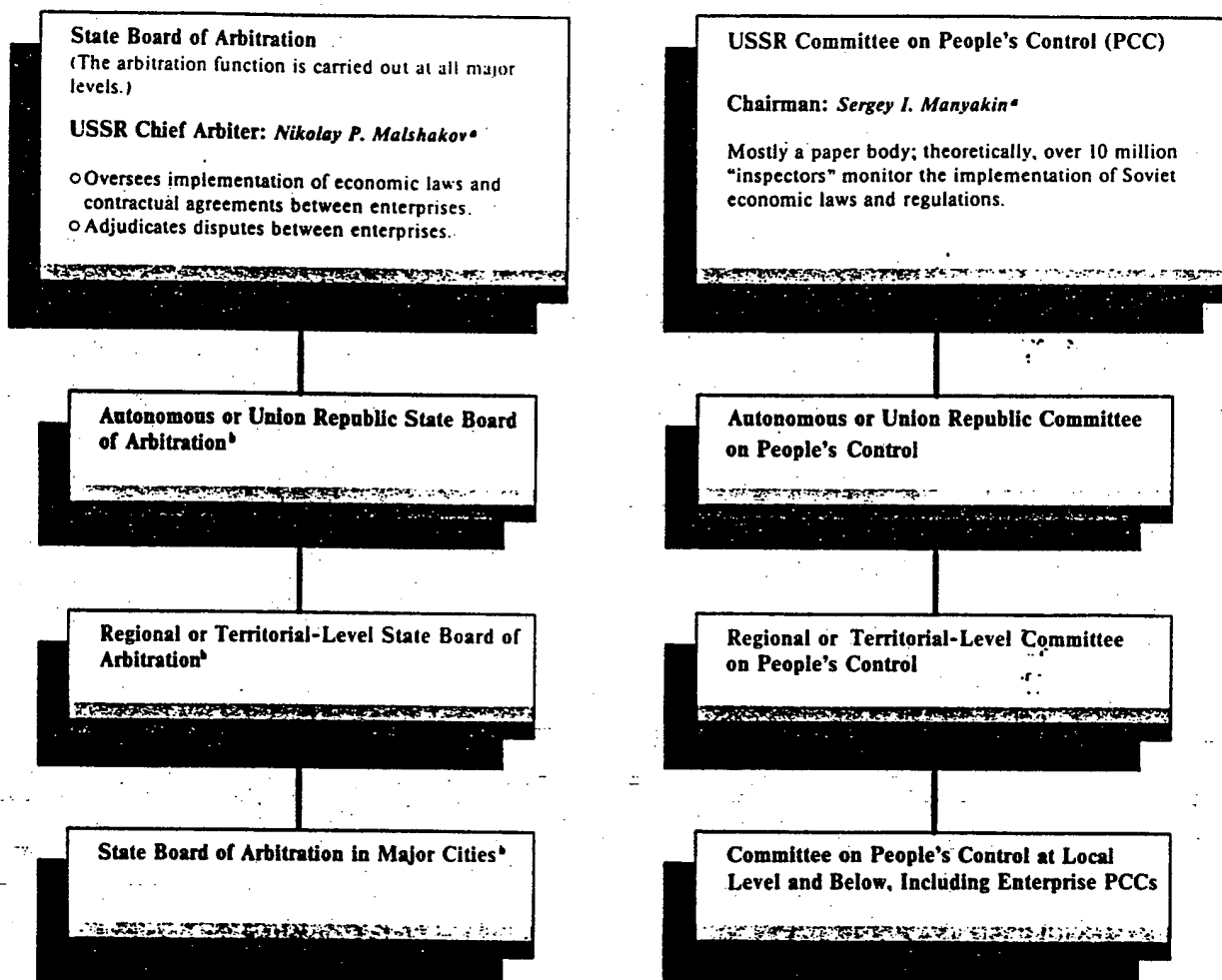


Figure 11
State Board of Arbitration and People's Control Committee



* Selected under Gorbachev.

^b Also subject to parallel government and party authority.

The Treaty and Legal Department of the Ministry of Foreign Affairs.

The Treaty and Legal Department of the Foreign Ministry handles international boundary disputes, cooperation in terrorism prevention, cooperation on narcotics trafficking, Law of the Sea matters, peaceful uses of outer space, and other matters of international significance. *

¹ For more information on the chamber's intelligence role, see DI Intelligence Assessment CR 86-11250 (Secret NF NC OC), March 1986, *Intelligence Collection in the USSR Chamber of Commerce and Industry*.

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Exemptions: (b)(1), (b)(3)